

AMENDED IN SENATE JUNE 1, 2015
AMENDED IN SENATE APRIL 20, 2015
AMENDED IN SENATE MARCH 26, 2015
AMENDED IN SENATE MARCH 12, 2015

SENATE BILL

No. 122

Introduced by Senators Jackson and Hill
(Coauthor: Senator Hertzberg)

January 15, 2015

An act to amend Sections 21082.1, 21091, 21159.9, and 21167.6 of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Jackson. California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action

or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require the lead agency, at the request of a project applicant and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, EIR, or other environmental document for projects.

(2) CEQA requires the lead agency to submit to the State Clearinghouse a sufficient number of copies of specified environmental documents prepared pursuant to CEQA for review and comment by state agencies in certain circumstances and a copy of those documents in electronic form, as prescribed. CEQA requires the Office of Planning and Research to implement, utilizing existing resources, a public assistance program to, among other things, establish and maintain a database to assist in the preparation of environmental documents, establish and maintain a central repository for the collection, storage, retrieval, and dissemination of certain notices provided to the office, and provide to the California State Library copies of documents submitted in electronic format to the office pursuant to CEQA.

This bill would require a lead agency to submit to the State Clearinghouse those environmental documents in either a hard-copy or electronic form as prescribed by the office. The bill would instead require the office to establish and maintain a database for the collection, storage, retrieval, and dissemination of environmental documents and notices prepared pursuant to CEQA and to make the database available online to the public. The bill would eliminate the requirement to provide copies of documents to the California State Library. The bill would require the office to submit to the Legislature a report, by July 1, 2016, describing the implementation of this requirement and a status report, by July 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21082.1 of the Public Resources Code
- 2 is amended to read:
- 3 21082.1. (a) A draft environmental impact report,
- 4 environmental impact report, negative declaration, or mitigated
- 5 negative declaration prepared pursuant to the requirements of this

1 division shall be prepared directly by, or under contract to, a public
2 agency.

3 (b) This section does not prohibit, and shall not be construed as
4 prohibiting, a person from submitting information or other
5 comments to the public agency responsible for preparing an
6 environmental impact report, draft environmental impact report,
7 negative declaration, or mitigated negative declaration. The
8 information or other comments may be submitted in any format,
9 shall be considered by the public agency, and may be included, in
10 whole or in part, in any report or declaration.

11 (c) The lead agency shall do all of the following:

12 (1) Independently review and analyze any report or declaration
13 required by this division.

14 (2) Circulate draft documents that reflect its independent
15 judgment.

16 (3) As part of the adoption of a negative declaration or a
17 mitigated negative declaration, or certification of an environmental
18 impact report, find that the report or declaration reflects the
19 independent judgment of the lead agency.

20 (4) Submit a sufficient number of copies, in either a hard-copy
21 or electronic form as required by the Office of Planning and
22 Research, of the draft environmental impact report, proposed
23 negative declaration, or proposed mitigated negative declaration
24 to the State Clearinghouse for review and comment by state
25 agencies, if any of the following apply:

26 (A) A state agency is any of the following:

- 27 (i) The lead agency.
28 (ii) A responsible agency.
29 (iii) A trustee agency.

30 (B) A state agency otherwise has jurisdiction by law with respect
31 to the project.

32 (C) The proposed project is of sufficient statewide, regional, or
33 areawide environmental significance as determined pursuant to
34 the guidelines certified and adopted pursuant to Section 21083.

35 SEC. 2. Section 21091 of the Public Resources Code is
36 amended to read:

37 21091. (a) The public review period for a draft environmental
38 impact report shall not be less than 30 days. If the draft
39 environmental impact report is submitted to the State Clearinghouse
40 for review, the review period shall be at least 45 days, and the lead

1 agency shall provide a sufficient number of copies of the document,
2 in either a hard-copy or electronic form as required by the Office
3 of Planning and Research, to the State Clearinghouse for review
4 and comment by state agencies.

5 (b) The public review period for a proposed negative declaration
6 or proposed mitigated negative declaration shall not be less than
7 20 days. If the proposed negative declaration or proposed mitigated
8 negative declaration is submitted to the State Clearinghouse for
9 review, the review period shall be at least 30 days, and the lead
10 agency shall provide a sufficient number of copies of the document,
11 in either a hard-copy or electronic form as required by the Office
12 of Planning and Research, to the State Clearinghouse for review
13 and comment by state agencies.

14 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
15 environmental impact report, proposed negative declaration, or
16 proposed mitigated negative declaration is submitted to the State
17 Clearinghouse for review and the period of review by the State
18 Clearinghouse is longer than the public review period established
19 pursuant to subdivision (a) or (b), whichever is applicable, the
20 public review period shall be at least as long as the period of review
21 and comment by state agencies as established by the State
22 Clearinghouse.

23 (2) The public review period and the state agency review period
24 may, but are not required to, begin and end at the same time. Day
25 one of the state agency review period shall be the date that the
26 State Clearinghouse distributes the CEQA document to state
27 agencies.

28 (3) If the submittal of a CEQA document is determined by the
29 State Clearinghouse to be complete, the State Clearinghouse shall
30 distribute the document within three working days from the date
31 of receipt. The State Clearinghouse shall specify the information
32 that will be required in order to determine the completeness of the
33 submittal of a CEQA document.

34 (d) (1) The lead agency shall consider comments it receives on
35 a draft environmental impact report, proposed negative declaration,
36 or proposed mitigated negative declaration if those comments are
37 received within the public review period.

38 (2) (A) With respect to the consideration of comments received
39 on a draft environmental impact report, the lead agency shall
40 evaluate comments on environmental issues that are received from

1 persons who have reviewed the draft and shall prepare a written
2 response pursuant to subparagraph (B). The lead agency may also
3 respond to comments that are received after the close of the public
4 review period.

5 (B) The written response shall describe the disposition of each
6 significant environmental issue that is raised by commenters. The
7 responses shall be prepared consistent with Section 15088 of Title
8 14 of the California Code of Regulations.

9 (3) (A) With respect to the consideration of comments received
10 on a draft environmental impact report, proposed negative
11 declaration, proposed mitigated negative declaration, or notice
12 pursuant to Section 21080.4, the lead agency shall accept comments
13 via electronic mail and shall treat electronic-mail comments as
14 equivalent to written comments.

15 (B) Any law or regulation relating to written comments received
16 on a draft environmental impact report, proposed negative
17 declaration, proposed mitigated negative declaration, or notice
18 received pursuant to Section 21080.4 shall also apply to
19 electronic-mail comments received for those reasons.

20 (e) (1) Criteria for shorter review periods by the State
21 Clearinghouse for documents that must be submitted to the State
22 Clearinghouse shall be set forth in the written guidelines issued
23 by the Office of Planning and Research and made available to the
24 public.

25 (2) Those shortened review periods may not be less than 30
26 days for a draft environmental impact report and 20 days for a
27 negative declaration.

28 (3) A request for a shortened review period shall only be made
29 in writing by the decisionmaking body of the lead agency to the
30 Office of Planning and Research. The decisionmaking body may
31 designate by resolution or ordinance a person authorized to request
32 a shortened review period. A designated person shall notify the
33 decisionmaking body of this request.

34 (4) A request approved by the State Clearinghouse shall be
35 consistent with the criteria set forth in the written guidelines of
36 the Office of Planning and Research.

37 (5) A shortened review period may not be approved by the
38 Office of Planning and Research for a proposed project of
39 statewide, regional, or areawide environmental significance as
40 determined pursuant to Section 21083.

1 (6) An approval of a shortened review period shall be given
2 prior to, and reflected in, the public notice required pursuant to
3 Section 21092.

4 (f) Prior to carrying out or approving a project for which a
5 negative declaration has been adopted, the lead agency shall
6 consider the negative declaration together with comments that
7 were received and considered pursuant to paragraph (1) of
8 subdivision (d).

9 SEC. 3. Section 21159.9 of the Public Resources Code is
10 amended to read:

11 21159.9. The Office of Planning and Research shall implement
12 a public assistance and information program to ensure efficient
13 and effective implementation of this division and to do both of the
14 following:

15 (a) Establish a public education and training program for
16 planners, developers, and other interested parties to assist them in
17 implementing this division.

18 (b) (1) Establish and maintain a database for the collection,
19 storage, retrieval, and dissemination of environmental documents,
20 notices of exemption, notices of preparation, notices of
21 determination, and notices of completion provided to the Office
22 of Planning and Research. The database shall be available online
23 to the public through the Internet. The Office of Planning and
24 Research may coordinate with another state agency to host and
25 maintain the online database.

26 (2) The Office of Planning and Research may phase in the
27 submission of electronic documents and use of the database by
28 state and local public agencies.

29 ~~(3) The Office of Planning and Research shall develop a budget~~
30 ~~for the development, hosting, and maintenance of the database and~~
31 ~~shall submit the budget to the Department of Finance for~~
32 ~~consideration and approval.~~

33 ~~(4)~~

34 (3) (A) Pursuant to Section 9795 of the Government Code, the
35 Office of Planning and Research shall, no later than July 1, 2016,
36 submit to the Legislature a report describing how it plans to
37 implement this subdivision, and shall provide an additional report
38 to the Legislature no later than July 1, 2018, describing the status
39 of the implementation of this subdivision.

1 (B) Pursuant to Section 10231.5 of the Government Code, this
2 paragraph is inoperative on July 1, 2022.

3 SEC. 4. Section 21167.6 of the Public Resources Code is
4 amended to read:

5 21167.6. Notwithstanding any other law, in all actions or
6 proceedings brought pursuant to Section 21167, except as provided
7 in Section 21167.6.2 or those involving the Public Utilities
8 Commission, all of the following shall apply:

9 (a) At the time that the action or proceeding is filed, the plaintiff
10 or petitioner shall file a request that the respondent public agency
11 prepare the record of proceedings relating to the subject of the
12 action or proceeding. The request, together with the complaint or
13 petition, shall be served personally upon the public agency not
14 later than 10 business days from the date that the action or
15 proceeding was filed.

16 (b) (1) The public agency shall prepare and certify the record
17 of proceedings not later than 60 days from the date that the request
18 specified in subdivision (a) was served upon the public agency.
19 Upon certification, the public agency shall lodge a copy of the
20 record of proceedings with the court and shall serve on the parties
21 notice that the record of proceedings has been certified and lodged
22 with the court. The parties shall pay any reasonable costs or fees
23 imposed for the preparation of the record of proceedings in
24 conformance with any law or rule of court.

25 (2) The plaintiff or petitioner may elect to prepare the record
26 of proceedings or the parties may agree to an alternative method
27 of preparation of the record of proceedings, subject to certification
28 of its accuracy by the public agency, within the time limit specified
29 in this subdivision.

30 (c) The time limit established by subdivision (b) may be
31 extended only upon the stipulation of all parties who have been
32 properly served in the action or proceeding or upon order of the
33 court. Extensions shall be liberally granted by the court when the
34 size of the record of proceedings renders infeasible compliance
35 with that time limit. There is no limit on the number of extensions
36 that may be granted by the court, but no single extension shall
37 exceed 60 days unless the court determines that a longer extension
38 is in the public interest.

39 (d) If the public agency fails to prepare and certify the record
40 within the time limit established in paragraph (1) of subdivision

1 (b), or any continuances of that time limit, the plaintiff or petitioner
2 may move for sanctions, and the court may, upon that motion,
3 grant appropriate sanctions.

4 (e) The record of proceedings shall include, but is not limited
5 to, all of the following items:

6 (1) All project application materials.

7 (2) All staff reports and related documents prepared by the
8 respondent public agency with respect to its compliance with the
9 substantive and procedural requirements of this division and with
10 respect to the action on the project.

11 (3) All staff reports and related documents prepared by the
12 respondent public agency and written testimony or documents
13 submitted by any person relevant to any findings or statement of
14 overriding considerations adopted by the respondent agency
15 pursuant to this division.

16 (4) Any transcript or minutes of the proceedings at which the
17 decisionmaking body of the respondent public agency heard
18 testimony on, or considered any environmental document on, the
19 project, and any transcript or minutes of proceedings before any
20 advisory body to the respondent public agency that were presented
21 to the decisionmaking body prior to action on the environmental
22 documents or on the project.

23 (5) All notices issued by the respondent public agency to comply
24 with this division or with any other law governing the processing
25 and approval of the project.

26 (6) All written comments received in response to, or in
27 connection with, environmental documents prepared for the project,
28 including responses to the notice of preparation.

29 (7) All written evidence or correspondence submitted to, or
30 transferred from, the respondent public agency with respect to
31 compliance with this division or with respect to the project.

32 (8) Any proposed decisions or findings submitted to the
33 decisionmaking body of the respondent public agency by its staff,
34 or the project proponent, project opponents, or other persons.

35 (9) The documentation of the final public agency decision,
36 including the final environmental impact report, mitigated negative
37 declaration, or negative declaration, and all documents, in addition
38 to those referenced in paragraph (3), cited or relied on in the
39 findings or in a statement of overriding considerations adopted
40 pursuant to this division.

1 (10) Any other written materials relevant to the respondent
2 public agency's compliance with this division or to its decision on
3 the merits of the project, including the initial study, any drafts of
4 any environmental document, or portions thereof, that have been
5 released for public review, and copies of studies or other documents
6 relied upon in any environmental document prepared for the project
7 and either made available to the public during the public review
8 period or included in the respondent public agency's files on the
9 project, and all internal agency communications, including staff
10 notes and memoranda related to the project or to compliance with
11 this division.

12 (11) The full written record before any inferior administrative
13 decisionmaking body whose decision was appealed to a superior
14 administrative decisionmaking body prior to the filing of litigation.

15 (f) In preparing the record of proceedings, the party preparing
16 the record shall strive to do so at reasonable cost in light of the
17 scope of the record.

18 (g) The clerk of the superior court shall prepare and certify the
19 clerk's transcript on appeal not later than 60 days from the date
20 that the notice designating the papers or records to be included in
21 the clerk's transcript was filed with the superior court, if the party
22 or parties pay any costs or fees for the preparation of the clerk's
23 transcript imposed in conformance with any law or rules of court.
24 Nothing in this subdivision precludes an election to proceed by
25 appendix, as provided in Rule 8.124 of the California Rules of
26 Court.

27 (h) Extensions of the period for the filing of any brief on appeal
28 may be allowed only by stipulation of the parties or by order of
29 the court for good cause shown. Extensions for the filing of a brief
30 on appeal shall be limited to one 30-day extension for the
31 preparation of an opening brief and one 30-day extension for the
32 preparation of a responding brief, except that the court may grant
33 a longer extension or additional extensions if it determines that
34 there is a substantial likelihood of settlement that would avoid the
35 necessity of completing the appeal.

36 (i) At the completion of the filing of briefs on appeal, the
37 appellant shall notify the court of the completion of the filing of
38 briefs, whereupon the clerk of the reviewing court shall set the
39 appeal for hearing on the first available calendar date.

1 SEC. 5. Section 21167.6.2 is added to the Public Resources
2 Code, to read:

3 21167.6.2. (a) (1) Notwithstanding Section 21167.6, upon
4 the written request of a project applicant received no later than 30
5 days after the date that the lead agency makes a determination
6 pursuant to subdivision (a) of Section 21080.1, Section 21094.5,
7 or Chapter 4.2 (commencing with Section 21155) and with the
8 consent of the lead agency as provided in subdivision (e), the lead
9 agency shall prepare and certify the record of proceedings in the
10 following manner:

11 (A) The lead agency for the project shall prepare the record of
12 proceedings pursuant to this division concurrently with the
13 administrative process.

14 (B) All documents and other materials placed in the record of
15 proceedings shall be posted on, and be downloadable from, an
16 Internet Web site maintained by the lead agency commencing with
17 the date of the release of the draft environmental document for the
18 project. If the lead agency cannot maintain an Internet Web site
19 with the information required pursuant to this section, the lead
20 agency shall provide a link on the agency's Internet Web site to
21 that information.

22 (C) The lead agency shall make available to the public in a
23 readily accessible electronic format the draft environmental
24 document for the project, and all other documents submitted to,
25 cited by, or relied on by the lead agency, in the preparation of the
26 draft environmental document for the project.

27 (D) A document prepared by the lead agency or submitted by
28 the applicant after the date of the release of the draft environmental
29 document for the project that is a part of the record of the
30 proceedings shall be made available to the public in a readily
31 accessible electronic format within 5 business days after the
32 document is released or received by the lead agency.

33 (E) The lead agency shall encourage written comments on the
34 project to be submitted in a readily accessible electronic format,
35 and shall make any comment available to the public in a readily
36 accessible electronic format within 5 business days of its receipt.

37 (F) Within 7 business days after the receipt of any comment
38 that is not in an electronic format, the lead agency shall convert
39 that comment into a readily accessible electronic format and make
40 it available to the public in that format.

1 (G) The lead agency shall certify the record of proceedings
2 within 30 days after the filing of the notice required pursuant to
3 Section 21108 or 21152.

4 (2) This subdivision does not require the disclosure or posting
5 of any trade secret as defined in Section 6254.7 of the Government
6 Code, information about the location of archaeological sites or
7 sacred lands, or any other information that is subject to the
8 disclosure restrictions of Section 6254 of the Government Code.

9 (b) Any dispute regarding the record of proceedings prepared
10 pursuant to this section shall be resolved by the court in an action
11 or proceeding brought pursuant to subdivision (b) or (c) of Section
12 21167.

13 (c) The content of the record of proceedings shall be as specified
14 in subdivision (e) of Section 21167.6.

15 (d) The negative declaration, mitigated negative declaration,
16 draft and final environmental impact report, or other environmental
17 document shall include a notice in no less than 12-point type stating
18 the following:

19
20 “THIS DOCUMENT IS SUBJECT TO SECTION 21167.6.2
21 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES
22 THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO
23 BE PREPARED CONCURRENTLY WITH THE
24 ADMINISTRATIVE PROCESS; DOCUMENTS PREPARED
25 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
26 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE;
27 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
28 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
29 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
30 FORMAT.”

31
32 (e) (1) The lead agency shall respond to a request by the project
33 applicant within 10 business days from the date that the request
34 pursuant to subdivision (a) is received by the lead agency.

35 (2) A project applicant and the lead agency may mutually agree,
36 in writing, to extend the time period for the lead agency to respond
37 pursuant to paragraph (1), but they shall not extend that period
38 beyond the commencement of the public review period for the
39 proposed negative declaration, mitigated negative declaration,

1 draft environmental impact report, or other environmental
2 document.

3 (3) The request to prepare a record of proceedings pursuant to
4 this section shall be deemed denied if the lead agency fails to
5 respond within 10 business days of receiving the request or within
6 the time period agreed upon pursuant to paragraph (2), whichever
7 ends later.

8 (f) The written request of the applicant submitted pursuant to
9 subdivision (a) shall include an agreement to pay all of the lead
10 agency's costs of preparing and certifying the record of proceedings
11 pursuant to this section and complying with the requirements of
12 this section, in a manner specified by the lead agency.

13 (g) The costs of preparing the record of proceedings pursuant
14 to this section and complying with the requirements of this section
15 are not recoverable costs pursuant to Section 1032 of the Code of
16 Civil Procedure.

17 (h) Pursuant to subdivision (f) and Section 21089, the lead
18 agency may charge and collect a reasonable fee from the person
19 making the request pursuant to subdivision (a) to recover the costs
20 incurred by the lead agency in preparing the record of proceedings
21 pursuant to this section.